IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 194 of 2003

in

SPECIAL CIVIL APPLICATIONNo 6131 of 1995

with

CIVIL APPLICATION NO 1322 OF 2003

Date of Decision: 17.3.2004

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STATE OF GUJARAT

VERSUS

BIPINBHAI N KAPADIA

(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mr.R.C. KODEKAR, AGP.

For the Respondent NO.1: NANAVATI ASSO. Mr.Adv.

FOR the Respondent No. 2 : MR JR NANAVATI

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

This letters patent appeal is directed against the judgment of the Single Judge dated 2/3-9-2002 in Special Civil Application No. 6131 of 1995.

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Whether reporters of Local Papers may be allowed to see the Judgment?

Shri Bipinbhai N. Kapadia (Respondent) joined service of the Institute of Agriculture as Executive Engineer from July 15, 1971. He was transferred to the Agriculture University. In August, 1974, his pay was revised to Rs.700-1250 later upgraded to Rs.1100-1600. From July 12, 1978, he was appointed as Director of Purchase and Properties (DPP) in Gujarat Agricultural University (GAU). The Board of Management decided to revise the pay scale of DPP from Rs.1100-1600 to Rs.1600-2000. The decision taken by the Board of Management was accepted by the Vice Chancellor. Therefore, vide notification dated December 22, 1982, the post and pay scale were upgraded and he was extended the pay scale of Rs.1600-2000 from January 16, 1983. Of course, the respondent was placed under suspension in a domestic inquiry which culminated in order dated August 12, 1991. Vide this order, one increment of the petitioner had been stopped. This order is relevant to the extent that the suspension allowance of the respondent has been worked out on the basis of the upgraded pay scale which has been given to him. The post of DPP has been made equivalent to the post of Superintending Engineer as reflected in the notification issued by the Vice Chancellor in view of the Board of Managment Meeting order dated September 10, 1982. Subsequently, the Local Fund Audit raised objection with regard to the pay scale of the respondent Rs.3700-5000 on the ground that no such pay scale was sanctioned by the State Government and the sanctioned pay scale for the post of DPP was Rs.3000-4500. Accordingly, the pay scale was reduced from Rs.3700-5000 to Rs.3000-4500 vide order dated August 3, 1994.

Therefore, the respondent challenged this decision through Special Civil Application No. 6131 of 1995 on the grounds, inter alia, that the University could upgrade the post and grant the pay scale even without approval of the State Government. He also contended that he had been availing revised pay scale for the post and the decision reducing his pay scale has been taken without hearing the petitioner and for these reasons, he contends that the decision dated August 3, 1994 is liable to be quashed.

Before the Single Judge, Shri Kotak, learned AGP contended that the decision dated August 3, 1994 has been taken pursuant to the objection raised by the Audit Department. Since the Pay Commission did not take into consideration the pay scale of Rs.1600-2000, rather it took into consideration the pay scale of Rs.1100-1600, revised to Rs.3000-4500. Shri J.R. Nanavaty, learned Counsel for the University submitted that the placement of the petitioner in the lower scale is the result of the decision taken by the Government. However, he maintains that the post of DPP was upgraded by the University and placed in the pay scale of Rs.1600-2000. The GAU was competent to do so. It did not require approval of the State Government for taking the decision irrespective of the fact that the University was receiving grant from the State.

Giving consideration to these submissions advanced by the parties, the Single Judge held that the post of DPP was upgraded in the pay scale of Rs.1600-2000 from the pay scale of Rs.1100-1600. Accordingly, the respondent was placed in the pay scale of Rs.1600-2000. He discharged the duties in this pay scale from 1982 till 1992. None of the appellants had objected to the placement of respondent in the pay scale of Rs.1600-2000, rather, the pay scale was revised to Rs.3700-5000 and retiral benefits calculated on that basis. All the authorities had similar approach with respect to the matter, but for the objections raised by the Local Fund after the retirement of the original petitioner. The Board of Management knew very well the pay scale of DPP. It upgraded this post to the level of Superintending Engineer. Having done so, the pay scale of the said post was naturally available to the respondent, So, it was sanctioned by the competent authority and the respondent availed it not only during the service but afterwards by way of pension. Therefore, examining the matter with this back ground and totality of circumstances, order of August 3, 1994 has been quashed. The respondent has been held entitled to the reliefs contained in the impugned judgment.

Through this appeal, the State has challenged this judgment reiterating that on objection being raised by the Local Fund Office, the University decided to withdraw the pay scale. For the first time, the Government Resolution dated 14th September, 1976 has been placed before us in support of the contention. After

having considered the submissions, we find that the GAU is financed by the State, Government of India, Indian Council of Agricultural Research and other Agencies. The State Government grant with regard to the salary, not less than the estimated net expenditure on pay and allowances. The Government may also extend financial assistance with respect to scheme(s) and any scheme initiated by the University without sanction by the Government is met from its own sources or taken from any other agencies. No other rule or regulation is brought to our notice enabling the State Government to control the functioning of the GAU with regard to the upgradation of post and grant of pay scale to the post (s), more so, post in question. Even otherwise, we find that before resorting to the action, the GAU and the respondent deserved hearing which has not been allowed. Therefore, giving consideration to the whole matter, we hold that the post of DPP was rightly upgraded by the GAU to the level of Superintending Engineer. The respondent was adjusted against this post, obviously entitled to the pay scale of Superintending Engineer admissible at that stage and revised from time to time. The State has no competence to nullify the order since the approval of the State Government was not necessary.

Consequently, we are in agreement with the order of the Single Judge and the appeal is dismissed leaving the parties to bear their own costs. The University to implement the judgment of the Single Judge within one month.

In view of the above order, Civil Application No. 1322 of 2003 shall also stand disposed of with no order as to costs.

[ BHAWANI SINGH ]
CHIEF JUSTICE

[ H.K.RATHOD ]
JUDGE
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